IN THE HIGH COURT OF LESOTHO

HELD AT MASERU CIV/T/512/2013

In the matter between:

'MAARABANG LETEBELE PLAINTIFF

AND

LESOTHO NATIONAL DEVELOPMENT CORPORATION (LNDC) DEFENDANT

JUDGMENT

Coram : Hon. Mr. Justice E.F.M.Makara
Date of Hearing : 10th July, 2019
Date of Judgment : 27th May, 2020

SUMMARY

The Plaintiff suing the Defendant for damages arising from the omission of the latter to maintain sufficient lightening of the staircase way to avoid a miscalculation of the steps resulting from blurred lights. This caused the Plaintiff to accidentally fall down over the steps and thereby sustaining bodily injuries with future adverse consequences and compromise on her quality of life. The Defendant advancing a defence of contributory negligence by the Plaintiff. It was held that the Plaintiff had proven that in the circumstances, the Defendant had a duty to maintain the lights and ought to have foreseen that failure to do so, had a propensity to cause the accident under consideration. The defence of contributory negligence was dismissed since the incidence happened at the time she had to exit the building by navigating her way down the staircase to get outside on her way home. She could not remain inside as it was time to knock off from duty. Resultantly, she was awarded the compensation she had prayed for.

ANNOTATIONS

CITED CASES

1. **Werner Roberts and Another v The MEC, Department of Police, Roads and Transport, Free State Province** Case No.: 1447/17
2. **H L & H Timber Products (Pty) Ltd v Sappi Manufacturing (Pty) Ltd**2001 4 SA 814 (SCA)
3. **Minister of Safety and Security v Van Duivenboden**2002 6 SA 431 (SCA)
4. **Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)** 2011 (3) SA 274 (CC)
5. **Kruger v Coetzee**1966 (2) SA 428 (AD)
6. **MTO Forestry (Pty) Ltd v Swart NO**2017 5 SA 76 (SCA)
7. **Lee v Minister of Correctional Services**(CCT 20/12) [2012] ZACC 30; 2013 (2) BCLR 129 (CC); 2013 (2) SA 144 (CC); 2013 (1) SACR 213 (CC)

MAKARA J.

Introduction

[1] This is a delictual claim in which the plaintiff claims damages resulting from bodily injuries which she attributes to the failure and/or omission by the Defendant to have taken necessary measures to avoid the cause of the incidence. Thus, she is asking this Court to enter judgment in which it directs the Defendant to award her damages thus:

(a) M70, 000.00 (Seventy Thousand Maloti) for pain and suffering;
(b) M30,000.00 (Thirty Thousand Maloti) for amenities of life and health;
(c) M50, 000.00 (Fifty Thousand Maloti) for future medical expenses;
(d) Interest at the rate of 18% per annum from the date of judgment to the date of payment;
(e) Costs of suit at attorney and client scale in the event of opposition;
(f) Further and or alternative relief.

[2] The Plaintiff premises her case against the Defendant upon a charge that at the material time and place she encounters a danger that made her experience bodily injuries accompanied with persisting psychological effects. She attributes this to the omission by the Defendant to have installed sufficient lighting to illuminate the stairway and lack of signage to prevent possible danger. The Defendant is the owner of the premises and has a legal obligation to maintain it against *inter alia* possible occurrence of injuries against people therein.

[3] Initially, the Defendant vehemently and consistently denied liability. It maintained that there were sufficient lights inside the place for the Plaintiff to have seen her way down the stairs. However, in the course of the trial, it abandoned that route and relied upon the alternative defence of contributory negligence. Thus, the facts advanced by the Plaintiff predominantly assumed a common cause scenario and the focus was turned over to the law governing that line of defence.

Common Cause

[4] The parties share a consensus that the accident which has occasioned litigation, happened at around 6:30 to 7:00 on the 26th February 2013 as the Plaintiff was knocking off duty from an office situated within a building complex owned by the Defendant. She worked there as an Accountant for her employers who are tenants

therein. Resultantly, she laments that she sustained physical injuries with some psychological element and impact upon her quality of life.

[5] The accident happened as the Plaintiff was going down the stairs from Block B 3rd Floor LNDC buildings to the car parking lot which is at the basement. She slipped and fell from the steps. Thereafter, she was rushed to Thetsane Private Hospital and upon examination by the doctors, she was immediately transferred to Bloemfontein Medi Clinic. Subsequently, she was hospitalized and treated for the injuries from the 27th of February, 2013 to the 2nd of March, 2013.

[6] Her account on the nature and degree of injuries was not contested and was by consent handed over to the Court as medical evidence. It revealed that she sustained the following injuries:

(a) Dislocation of bones;

(b) Fracture on the bones that occasioned moves to reduce the fracture and a separate operation to straighten the legs together with an insertion of an iron rod fitted between the bones of the ankle and movement with difficulty or disfigurement;

(c) A tibio-peroneal diastasis allusive to a failure of the co-aption between the two bones which imply intra-osseas ligament tear as well as rupture of the talo fibular posterior and anterior which was not adequately corrected.

[7] The Maseru Private Hospital referred the Plaintiff to Medi Clinic in Bloemfontein in recognition of the nature, seriousness and the agonizing pain, which the Plaintiff sustained.

Issues

[8] As it has already been projected, initially the main resultant standing issue for determination revolves around the adequacy of the light, which the Defendant had provided in the basement at the material time. This is so against the background that the Defendant has not denied that it had a duty and obligation to maintain the complex in order to ascertain the safety and security of every one within its premises. The secondary question was whether the plaintiff's injuries directly resulted from the negligence or omission by the Defendant to have provided sufficient lighting so that the Plaintiff would have clearly seen the stairs to avoid a possible miscalculation of her steps.

[9] Subsequently, because of the abandonment of the principal defence, the controversy assumed a legal content in that it focused on whether in the circumstances agreed upon, the Plaintiff had negligently contributed to the accident. This is by operation of law, suggestive that the quantum of damages would be judged in that context.

The Parties Respective Cases on Contributory Negligence

[10] It has to be realized that the facts pertaining to the abandoned controversy on whether the accident is associated with the negligence of the Defendant, apply commonly to those concerning the question of contributory negligence. Thus, the Plaintiff motivated her case by demonstrating that in the circumstances she had acted diligently to avoid accident. Her main case was that this notwithstanding, she encountered the accident due to the omission by the Defendant to have provided adequate lighting over the stairway for people to safely walk through them. To support her case, she told the Court that she even used the steps balustrade to maintain her balance while simultaneously using her feet to gage the end of every step. A critical aspect of her narrative is that in the process, she misidentified the penultimate step for the last one, which caused her to fall down. This should be appreciated against the background that the Defendant has agreed that it had a legal obligation to have provided sufficient lighting within the building complex.

[11] The Plaintiff further supported her evidence by tendering medical evidence from a specialist doctor. It revealed that she suffered lesion on the right ankle and fracture fibula with tibio peroneal diastasis weber type B with a consolidated (fibula) that necessitated the iron to be placed between the bones and a rapture of one of her limp bones. According to her, after the injuries she experiences pains after walking for 175 meters, finds it difficult to

climb stairs with the injured leg, cannot run and jump especially when it is cold. She described her incapacitation as a trauma hypertrophy and maintained that the accident has physically incapacitated her permanently.

[12] A centerpiece of the lamentation by the Plaintiff is that the accident is attributable to the failure of the Defendant to have performed their obligation by providing sufficient lights for adequately illumination of the scene.

[13] To justify the quantum of damages she prayed for, the Plaintiff asked the Court to take into account her duration of hospitalization which ran from the 28th February to the 2nd March 2013. In addition, there should be a consideration of the medical fees which she paid at the Maseru Private Hospital, the services she received from the specialists in Lesotho and in South Africa and other incidentals which all amounted to fifty thousand maloti (50.000. 00). She specifically referred the Court to the initial medical bill of M31.000.00, followed by one of M6, 500 and the other of M1800.

Exploration of the Law and the Findings

[14] It is worthwhile to caution that the decision would be premised on the uncontested factual landscape mainly presented by the Plaintiff. This would be considered side by side with the defence advanced by the Defendant that the Plaintiff contributed

to the negligence. Understandably, the latter trajectory is suggestive that the Court should consequently attribute the blame to both parties and do likewise in the apportionment of the quantum of damages. So, the conduct, wrongfulness, negligence, causation and the question of quantum would be considered in that context.

[15] After the Defendant abandoned the initial defence, it became clear that it conceded its negligence to have provided sufficient lighting to avoid a possible danger to be caused by its insufficiency. So, the Court is left with a task to determine if the Plaintiff contributed to the negligence by navigating her way down a staircase in the stated circumstances. The enquiry would establish whether the injuries sustained by the Plaintiff directly resulted from a delictual omission by the Defendant. In other words, it should be determined if there is a causal link between the injuries she sustained and the conduct of the Defendant.

[16] The fact that the Defendant did not present a counter evidence against the charge that it had at the material time failed to fulfil its obligation to provide sufficient lighting at the material time and that this was the cause of the accident, represents a determinative paradigm in this case. Thus, the Court is left with no option except to accept the version of the Plaintiff as true. This is in tune with the thinking expressed by the court in **Werner Roberts and Another v The MEC, Department of Police, Roads and**

Transport, Free State Province[1]**.** Here, it was cautioned that the defendant committed a fatal omission by having failed to tender evidence in pleadings or evidence to support its version on a material aspect of the case and that statement by counsel was not evidence.

[17] Delictual liability may constitute in a form of *commission* or *omission.* The former applies where the plaintiff suffered as a result of a wrongful act committed by the defendant under the circumstances in which he ought to have foreseen the possible consequences of such an act. O*mission* on the other hand, pertains to where the defendant failed to act accordingly under the circumstances where he ought to have perceived the possible adverse consequences of such omission. In both incidences, the plaintiff must have consequentially suffered personally or property wise. This was well captured in **H L & H Timber Products (Pty) Ltd v Sappi Manufacturing (Pty) Ltd**[2] as follows:

> Conduct … can take the form of a *commission*, for example where the fire causing the loss was started by the defendant … or an *omission*, for example the failure to exercise proper control over a fire of which he was legally in charge … or the failure to contain a fire when, in the absence of countervailing considerations adduced by him, he was under the legal duty, by virtue of his ownership or control of the property, to prevent it from escaping onto a neighboring property thereby causing loss to others …

[18] It is clear therefore, that in *casu* the Court is dealing with the case of omission on the part of the Defendant who by virtue of

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[1] Case No.: 1447/17 para 74
[2] 2001 4 SA 814 (SCA) para 14

being the owner of the building complex under consideration, failed to sufficiently light up the staircase to avoid the accident caused by compromised lighting. A resultant question would be whether the omission renders the Defendant delictually liable. The answer to this question was well articulated in the Law of Delict[3] in this manner:

> An act which causes harm to another is in itself insufficient to give rise to delictual liability. For the liability to follow, prejudice must be caused in a wrongful, that is, a legally reprehensible or unreasonable manner[4].

[19] In the present case, it is common cause that the Defendant had a legal duty to have *inter alia* maintained the lighting standard for the illumination of the staircase to guard against any possible danger caused by lack of such a condition and that it did not do so. Resultantly, the Plaintiff missed a step and sustained physical including psychological injuries. These caused her to incur medical expenses. The omission was legally reprehensible, wrongful and unreasonable. The wrongfulness dimension is occasioned by the fact that the Defendant as a reasonable minded juristic persona had a legal duty to have guarded against the perceptible potential danger.

[20] The jurisprudence regarding the legal duty of a defendant to have taken measures to avoid a possible danger upon the plaintiff was developed by Nugent JA in **Minister of Safety and Security v Van**

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[3] Neethling; Potgieter; Visser et al *Law of Delict* Fifth Edition, 2005
[4] *Ibid* at page 31

Duivenboden[5] by introducing an element of a circumstantial evidence based judgment. This obliges the Court to consider all the material aspects. In that thinking, regard would *inter alia* be had to the customs, standards, public policy, the minds set prevalent within the concerned environment. The considerations would then lead towards a determination of the issue on whether in the mind of a reasonable man, it would not emerge that the defendant could have foreseen that he had a legal duty to avert a possible danger by acting or electing inertia.

[21] Resultantly, it has to be considered that reasonableness at this stage has nothing to do with the conduct of the defendant but has much to do with the imposition of liability on the defendant by the court. In other words, the question is whether it will be reasonable for the court to impose liability on the defendant for the harm he has caused to the plaintiff in the circumstances of the case. In this regard, the Constitutional Court of South Africa sated in **Le Roux and Others v Dey (Freedom of Expression Institute and Restorative Justice Centre as Amici Curiae)**[6] that:

> In the more recent past our courts have come to recognise, however, that in the context of the law of delict: *(a)* the criterion of wrongfulness ultimately depends on a judicial determination of whether — assuming all the other elements of delictual liability to be present — it would be reasonable to impose liability on a defendant for the damages flowing from specific conduct; and *(b)* that the judicial determination of that reasonableness would in turn depend on considerations of public and legal policy in accordance with constitutional norms. Incidentally, to avoid confusion it should be borne in mind that, what is meant by reasonableness in the context of wrongfulness has nothing to do with the reasonableness of the defendant's conduct, but it concerns the reasonableness of imposing

[5] 2002 6 SA 431 (SCA) para 12
[6] 2011 (3) SA 274 (CC) para 122

> liability on the defendant for the harm resulting from that conduct. (emphasis added).

[22] As stated above, constitutional norms should also be taken into account in determining the liability of the defendant towards the plaintiff. A good example would be where the plaintiff suffered illness because of an act of the defendant act of polluting a village water sources or the atmosphere. Understandably, this would violate the constitutional right of villagers to a healthy environment. In fact it would be justifiable to assume that the defendant ought to have reasonably foreseen the consequences of his act or omission to have taken the measures to avert that.

[23] Accordingly, in casu, public and legal policy considerations dictate that the Defendant as the owner of a building had a legal obligation at all material times to install sufficient lighting throughout the staircase or take alternative measures to ascertain the safety of their users. Therefore, the management of the Defendant should have reasonably foreseen that its failure to act accordingly would constitute a wrongful omission. This lends a direct support from the test of a reasonable man *deligience paterfamilias* elucidated in **Kruger v Coetzee**[7] which was later cited with approval in **MTO Forestry (Pty) Ltd v Swart NO**[8] in these terms:

> As was mentioned by this court in Durr a landowner is under a 'duty' to control or extinguish a fire burning on its land. But as Nienaber JA stressed in H L & H Timber, whilst landowners may be settled with the primary responsibility of ensuring that fires on their land do not escape the boundaries, this falls short of being an absolute duty. And in considering what steps were reasonable, it must be

[7] 1966 (2) SA 428 (AD) at 430E- G
[8] 2017 5 SA 76 (SCA) para 45

> remembered that a reasonable person is not a timorous faint-heart always in trepidation of harm occurring but 'ventures out into the world, engages in affairs and takes reasonable chances'. Thus in considering what steps a reasonable person would have taken and the standard of care expected, the bar, whilst high, must not be set so high as to be out of reasonable reach[9].

[24] In applying the law as stated above to the facts in *casu*, the question to be asked would be what were the reasonable steps taken by the Defendant to guard against insufficiency of light occurring. According to the Plaintiff there were no steps taken by the defendant and further that the defendant failed or omitted to put in place some warning signs to the fact that there was insufficiency of light and direct as to what should be done in such circumstances. She went further to state that the situation was worsened by the fact that the lift and some lights were not working.

[25] Regrettably, the Defendant did not feature any witness to gainsay the revelations of the plaintiff or at least to show the steps taken by the Defendant to ensure the safety of his tenants and the people inside the building. The explanation of the steps taken by the Defendant would assist the Court to determine whether those steps were reasonable to satisfy the test of a reasonable man as required by the law. Without such pivotal information, this Court is inclined to accept the evidence of the Plaintiff that there were no steps taken to ensure their safety in the building.

[26] Intriguingly, the question at this stage is not what the Defendant has done but whether the reasonable man in the

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[9] *Ibid*

position of the defendant would foresee a reasonable possibility of his conduct causing harm to another. So the answer to this question in *casu* is in the affirmative because a reasonable man would foresee that anything can happen if a person does not see clearly due to scarcity of light. That means the Defendant has not satisfied the first leg of the test in **Coetzee** *supra* by not having foreseen the reasonable possibility of his conduct causing injury to the plaintiff in the circumstances of this case. As stated above, foreseeability of harm occurring need not be certain but the reasonable person on the position of the Defendant should only foresee a reasonable possibility of harm presenting itself[10].

[27] The second leg is whether the reasonable man would take the reasonable steps to guard against a reasonably foreseeable danger. The measures would be to fix or repair the lights or pending that, display danger caution signals for the users of the staircase to be more vigilant about a possible accident and/or repair the lift as an alternative entrance and exit route during emergency. The strategic significance of warning signs was captured thus in **Smith** *supra*[11]:

> Unlike the court *a quo*, I therefore do not think it can be found as a fact that the warning measures proposed by Tromp (appellant's expert) would be of no consequence. On the contrary, in my view, they would probably have been effective. This means that, but for the respondents' wrongful and negligent failure to take reasonable steps, the harm that befell the deceased would not have occurred.

[28] The partial defence raised by the Defendant that the Plaintiff contributed to the accident and, therefore, that in recognition of

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[10] Kruger v Coetze *supra*
[11] Para 32

that, there should be an apportionment of damages between the parties, is in the context of this case, found irrelevant and inconsequential. The proposition by the Defendant is based upon a charge that the Plaintiff ought to have reasonably foreseen the danger. In that regard, the Plaintiff has clearly and consistently explained that she met the accident as she was walking out of the building because it was after working hours and could not remain inside the building throughout the night. To elucidate her case, she stated that her home is in Teyateyaneng in the district of Berea. This could be about 40 Kms away from her office, which is in Maseru. The Court does not see how in the circumstances the defendant could blame the Plaintiff over the accident but admit its omission. In almost the same scenario, the court in Werner **Roberts and Ano** *supra*[12] rejected an analogous defence in these words:

> However, the fact that Werner did not foresee the reasonable possibility that an animal, whether a kudu or other domesticated animal such as a bovine, horse or donkey, might enter the road and cause damage, is not the test. One needs to establish whether the *diligens paterfamilias* in the position of defendant would foresee the reasonable possibility of his omission injuring another, would take reasonable steps to guard against such occurrence and defendant failed to take such steps[13].

[29] The last prerequisite for liability in the law of delict is causation. In an endeavour to determine causation, courts have identified a two-fold requirement. In this regard, it was stated in **Werner**[14] thus:

> The first requirement is a factual one relating to the question whether the negligent act or omission in question caused or materially contributed to the harm giving rise to the claim. The so-called "but for" test applies. If factual causation is not proven, it is the end of the matter. The second requirement is a sufficient link between the

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[12] Para 80

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[14] *Ibid* para 63

> negligent act or omission and the harm suffered, or put otherwise, legal causation. As in *Bakkerud supra* defendant at its peril failed to lead evidence in this regard.

[30] The above quotation is instructive that the omission by the defendant need not be the only cause of the harm suffered by the plaintiff but its material contribution is enough to satisfy the "but for" test. Whether the negligent act or omission in question caused or materially contributed to the harm giving rise to the claim is a question of facts or evidence and probabilities. In this regard, the decision of the court in **Lee v Minister of Correctional Services**[15] is illustrative that:

> Whether an act can be identified as a cause depends on a conclusion drawn from available facts or evidence and relevant probabilities. Factual causation, unlike legal causation where the question of the remoteness of the consequences is considered, is not in itself a policy matter but rather a question of fact which constitutes issues connected with decisions on constitutional matters ---.

[31] In an endeavour to illustrate how the "but for" test is applied in practice, this Court believes it is prudent to again refer to the case of **Lee**[16] *supra* where it was demonstrated that:

> In the case of "positive" conduct or commission on the part of the defendant, the conduct is mentally removed to determine whether the relevant consequence would still have resulted. However, in the case of an omission the but-for test requires that a hypothetical positive act be inserted in the particular set of facts, the so- called mental removal of the defendant's omission. This means that reasonable conduct of the defendant would be inserted into the set of facts. However, as will be shown in detail later, the rule regarding the application of the test in positive acts and omission cases is not inflexible. There are cases in which the strict application of the rule would result in an injustice, hence a requirement for flexibility. The other reason is because it is not always easy to draw the line between a positive act and an omission. Indeed there is no magic formula by

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[15] (CCT 20/12) [2012] ZACC 30; 2013 (2) BCLR 129 (CC); 2013 (2) SA 144 (CC); 2013 (1) SACR 213 (CC) para 39

[16] *Ibid* para 41

> which one can generally establish a causal nexus. The existence of the nexus will be dependent on the facts of a particular case.

[32] In establishing this requirement of the law, the plaintiff told the Court that the harm that befell her was caused by the insufficiency of light at the place at the material time and place. She attributed that to the omission of the Defendant to fix up or maintain the lights to sufficiently light up the stairway. To illustrate her case, she explained that she met the accident at the time she had to leave for her home since it was after working hours.

[33] In applying the test as stipulated above to the facts in *casu*, the inadequacy of light will be mentally removed and substituted with adequacy of light and see what would be the position. It is clear from the evidence that the plaintiff's episode happened as a result of lack of light at the building. This means if there was enough light, she wouldn't have suffered such harm. Put it differently, had it not been the omission to put enough light on the building of the defendant, the plaintiff would probably not have suffered harm. But for the defendant's omission, plaintiff would not have suffered injuries. It is, therefore, determined that factual causation has been established.

[34] However, the fact that factual causation has been established is not enough for liability to ensue. The Court still has to determine whether legal causation has also been established. In this regard,

this Court finds substantiation again from the dictum in **Lee**[17] *supra* that:

> The point of departure is to have clarity on what causation is. This element of liability gives rise to two distinct enquiries. The first is a factual enquiry into whether the negligent act or omission caused the harm giving rise to the claim. If it did not, then that is the end of the matter. If it did, the second enquiry, a juridical problem, arises. The question is then whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensue or whether the harm is too remote. This is termed legal causation. (Highlighted by the Court).

[35] When dealing with the second requirement of causation, namely, legal causation, the question is whether the negligent act or omission is linked to the harm sufficiently closely or directly for legal liability to ensue or whether the harm is too remote. Clearly in *casu*, the uncontested evidence of the plaintiff shows that her misfortune is linked closely or directly to the insufficiency of light at the building of the defendant at the material time. Therefore, legal causation has also been established.

[36] Moreover, the Plaintiff has complemented her case by further establishing a legal causation when she testified that in the circumstances she projected at the scene of the incidence, it should have occurred to a reasonable man, as is the Defendant, that the compromised lighting could cause a danger. This is indicative that the latter owed a legal duty to avert a possible danger to any user of the stairs. The evidence presented is in tune

[17] *Ibid* para 38

with the principle enunciated in **Lee** *supra,* that the Plaintiff has to show that the Defendant directly owed the victim a legal duty.

[37] For the sake of clarity, the uncontested evidence tendered by the Plaintiff reveals that she has satisfied a two-staged requirement for her delictual claim against the Defendant to stand. These are that she has proven that the negligent or omission under consideration caused the harm (factual causation) and also that it is sufficiently closely or directly linked to the harm she suffered and that it is not too remote to give her a right to lodge the delictual claim (legal causation).

The Question of a Contributory Negligence by the Plaintiff

[38] The issue is addressed in consequence of a defensive charge advanced by the Defendant that the Plaintiff contributed to the accident. A supportive reasoning was that the Plaintiff had recklessly elected to gamble with her life by walking down the stairs under potentially dangerous circumstances which she aggravated by wearing high hills shoes and carrying a hand bag.

[39] A foundational cause of the accident is the failure of the Defendant. Unfortunately, the Plaintiff became its victim while she was getting outside the building en route her home after working hours and it was natural for her to do so. The Court takes judicial notice that it is normal for modern day women to wear high hills shoes when they go to work and for whatever reason to carry a bag or bags. This is a factual scenario which the Defendant should have been aware of and, therefore, installed sufficient lighting

along the staircase to guard against women in those circumstances to have a limited vision of the stairs and miscalculate their pattern as they ascend or descend them. The Plaintiff had no reason to anticipate that her high hill shoes and bag would, on the day of the incidence require her to take extra caution as she walked down the stairs. The precaution she took were sufficient. Besides in her evidence in chief, she consistently maintained under cross examination that she had done her level best to carefully navigate her way down the stairs. In any event, there was no evidence led to demonstrate that she walked carelessly. As warned in **Werner Roberts and Another** (supra), a Defendant who does not feature evidence on a determinative point, commits a fatal mistake. Resultantly, there would be no basis for the Court to doubt the version presented by the Plaintiff.

[40] The Court finds the defence that the Plaintiff contributed to the negligence to remain unsubstantiated and, so, remains unsuccessful.

[41] On the interest prayed for, there is no justification for asking the Court to grant interest at 18% which is a prime rate and yet this is not applicable in this case. A prime rate is subject to the market forces periodically fixed by the Central Bank. It usually applies to loaned monies where the parties have specifically agreed on it. The ordinary rate is likewise annually determined by the same institution at a relatively lower scale.

[42] There is no reason for the Plaintiff to have asked the Court to award her costs on the attorney and client scale. The law is clear on the grounds which justify that punitive scale and there is no iota of such in this case.

[43] In the premises, the Plaintiff is found to have proven her case on the balance of probabilities and she is accordingly awarded damages against the Defendant as follows:

(a) M70, 000.00 (Seventy Thousand Maloti) for pain and suffering;
(b) M30,000.00 (Thirty Thousand Maloti) for amenities of life and health;
(c) M50, 000.00 (Fifty Thousand Maloti) for future medical expenses;
(d) Interest at the ordinary rate per annum from the date of judgment to the date of payment;
(e) Costs of suit at the ordinary scale.

EFM MAKARA
JUDGE

For Plaintiff : Mrs. Lesupi of Maflt Legal Services Attorneys

For Defendant : Mr. Cronje of Webber Newdigate